Supreme Court, U.S.
FILED
APR 21 1993
OFFICE OF THE CLERK

92-1859

NO. _____

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1992

GEORGE KRAWSHUK,

Petitioner

VS.

ROBERT E. HOUSTON & LEE ANN HOUSTON,

Respondents

PETITION FOR A WRIT OF CERTIORARI TO

THE CONNECTICUT SUPREME COURT

PETITION FOR A WRIT OF CERTIORARI

George Krawshuk
83 Birdseye Road
Farmington, CT 06032
(203) 677-2774

Appearing Pro Se

QUESTIONS PRESENTED FOR REVIEW

Was Petitioner denied due process in a state mortgage foreclosure proceeding wherein he timely filed all necessary pleadings but was never granted a hearing on the merits of his defense?

Did the seizure of real property from the Petitioner in a state foreclosure proceeding constitute a confiscatory taking in the absence of a hearing on the merits of his defense?

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IN THE SUPREME COURT OF THE UNITED STATES

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GEORGE KRAWSHUK, Petitioner

VS.

ROBERT E. HOUSTON & LEE ANN HOUSTON,

Respondents

PETITION FOR A WRIT OF CERTIORARI TO THE CONNECTICUT SUPREME COURT

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

I, George Krawshuk, the Petitioner herein, pray that a Writ of Certiorari be issued to review the judgment of the Supreme Court of Connecticut entered in the above entitled case on January 21, 1993.

OPINIONS BELOW

The Petition For Certification of

Appeal was denied by the Supreme Court of Connecticut on January 21, 1993. That denial is not reported in any official publication, but bears the document number NO. PSC-92-0388 and is printed in the appendix to this petition. In addition, two Orders of the Connecticut Appellate Court that are unreported, are also printed in the appendix to this petition.

JURISDICTION

The denial of the Petition For Certification to Appeal by the Supreme Court of Connecticut was entered on January 21, 1993. The Supreme Court of Connecticut is the Court of last resort in that state. The jurisdiction of the United States Supreme Court is invoked under 28 USC 1257 (a), Rule 10 of the Rules of the Supreme Court of the United States and Article III, Sect. 2 of the United States Constitution.

CONSTITUTIONAL PROVISIONS

The Constitution of the United States of America, Amendment XIV, Section 1, declares the following:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property; without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

The Constitution of the State of Connecticut, Article I, Section 8, declares the following:

"No person shall be compelled to give

evidence against himself, nor be deprived of life, liberty or property without due process of law,..."

STATEMENT OF THE FACTS

The Respondents brought a foreclosure action of a mortgage against the Petitioner in Connecticut Superior Court, which is the State Trial Court.

On June 28, 1991, prior to judgment being entered, the Petitioners's counsel formally entered an Appearance in the foreclosure action. On July 3, 1991 Petitioner was defaulted by the Trial Court for purportedly failing to appear in said action.

On August 12, 1991, the Trial Court rendered a Judgment of Foreclosure by Sale without considering the merits of Petitioner's defenses. Ostensibly, the judgment was entered on the basis of the default which has been erroneously entered

on July 3, 1991.

On October 24, 1991, the Petitioner filed a Motion to Open Judgment Upon Default with the Trial Court. That motion was denied on November 18, 1991. On December 9, 1991, the Petitioner filed an appeal of that decision to the Connecticut Appellate Court which appeal was denied on March 11, 1992.

Over the continuous and strenuous objections of Petitioner's counsel, the Trial Court on June 22, 1992 approved the sale of Petitioner's property pursuant to the Judgment of Foreclosure by Sale. Petitioner appealed said decision approving the sale but the Appellate Court on September 17, 1992 dismissed that appeal.

On or about September 29, 1992, the Petitioner filed a Motion For Reconsideration of its September 17, 1992 decision which was denied. A second

request for oral argument was also denied on or about November 12, 1992.

The Supreme Court of Connecticut denied a Petition for Certification to Appeal without a hearing on January 21, 1993.

REASONS FOR GRANTING WRIT

As stated in both the U.S. Constitution and the Connecticut Constitution, no person shall be deprived of his "life, liberty, or property without due process of law".

A "root requirement" of this due process is a right to a hearing before being deprived of a significant property interest. Boddie v. Connecticut 401 U.S. 371 (1971); Goldberg v. Kelly 397 U.S. 254 (1970).

The Connecticut mortgage foreclosure proceedings deprive a land owner of the use and possession of his property to an extent

that significantly impacts on the land owners ability to exercise the full scope of his property rights. The foreclosure proceedings not only impair the marketability of the real estate but also may harm the land owner's credit rating and may prevent him from using the property as a collateral. See Connecticut vs. Doehr 111 Supreme Court 2105 (1991). These affects are certainly worthy of due process protection. See Fuentes v. Shevin 407 U.S. 67 (1972).

In the present case, the Petitioner and his real property were the subjects of foreclosure proceedings initiated by the Respondents on February 27, 1991, pursuant to state statute. The Petitioner, by way of counsel, formerly entered an Appearance on or about June 28, 1991. Petitioner at all times objected to the foreclosure and sought to have special defenses considered

and adjudicated in said foreclosure proceedings. However, Petitioner was not accorded an opportunity to be heard in his defense because the state Trial Court erroneously defaulted Petitioner for failing to appear on July 3, 1991. It was clear procedural error for the Trial Court to default Petitioner for failing to appear when the record disclosed that said appearance had in fact been entered on June 28, 1991, three (3) days prior to the default being issued.

On August 12, 1991, the Trial Court rendered a Judgment of Foreclosure by Sale without considering the Petitioner's defenses. The Trial Court indicated that it was made on the basis of the aforementioned erroneous default.

Also, on August 12, 1991, the Petitioner's counsel sought repeatedly to persuade the Trial Court to consider

Petitioner's defenses in light of the fact that the default entered on July 3, 1991 was erroneous and contrary to law. The Trial Court issued said Judgment of Foreclosure by Sale not withstanding the protestations of Petitioner's counsel. This judgment has been upheld by the Connecticut Appellate Court. In addition, the Supreme Court of Connecticut denied the Petitioner's Certification of Appeal to that Court on January 21, 1993.

In sum, the Petitioner's Federal and State Due Process Rights have been violated by the State Courts' failure to afford the Petitioner an opportunity to be heard and to have his defenses adjudicated prior to his real property being seized and sold in state foreclosing proceedings.

CLOSING STATEMENTS

This is a mortgage foreclosure action wherein the petitioner alleged special

defense. At several instances in the Trial Court proceedings the Petitioner's counsel argued that he had not been afforded a hearing on the merits of his case. This question was also put forward in the Petitioner's appeal to the Connecticut Appellate Court in paragraph 3 of his preliminary statement of issues section, and in Section 1, paragraph II of his Petition For Certification to the Connecticut Supreme Court.

The Trial, Appellate and Supreme Courts of Connecticut denied the Petitioner a hearing on the merits despite the timely filing of procedural pleadings. The court of last resort in Connecticut denied the Petitioner's request for a hearing, and he asserts that he has been denied due process and has been the victim of a confiscatory taking of his real property, all in violation of his rights that are guaranteed

by the due process provisions of the United States Constitution and the Constitution of the State of Connecticut.

Respectfully Submitted,

PETITIONER

BY George Krawshuk

George Krawshuk
83 Birdseye Road
Farmington, CT 06032
Tel. No. (203) 677-2774

APPEARING PRO SE

APPENDIX

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SUPREME COURT

STATE OF CONNECTICUT

No. PSC-92-0388

Robert E. Houston et al.

v.

George Krawshuk et al.

ORDER ON PETITION FOR CERTIFICATION TO APPEAL

On consideration of the petitioner by the named defendant for certification to appeal from the Appellate Court [AC 11530], it is hereby ordered that said petition be, and the same is hereby denied.

BY THE COURT,

Alan M. Gannuscio

ASSISTANT CLERK-APPELLATE

Date: January 21, 1993
Notice sent: 1/21/93
Clerk, Superior Court, Hartford - CV91 0391250S
Clerk, Appellate Court
Lepine & Serrano
Wollenberg, Scully & Nicksa

Ronald L. Lepine in support of petition;
Robert J. Reeve in opposition.

NO. A.C. 11530

ROBERT E. HOUSTON ET AL: APPELLATE COURT

V. : STATE OF CONN.

GEORGE KRAWSHUK ET AL : SEPTEMBER 17, 1992

O R D E R

THE MOTION TO DISMISS OF THE PLAINTIFFS- APPELLEES ROBERT E. HOUSTON AND LEE ANN HOUSTON, FILED ON JULY 15, 1992 HAVING BEEN PRESENTED TO THE COURT, IT IS HEREBY O R D E R E D GRANTED.

THE REQUEST FOR HEARING IS DENIED.

BY THE COURT

Alan M. Gannuscio
ASSISTANT CLERK-APPELLATE

NOTICE SENT: 9/17/92
WOLLENBERG, SCULLY & NICKSA
LEPINE & SERRANO
HON. SAMUEL FREED
CLERK, H/NB AT HARTFORD
(391250)
TO PAC

NO TRANS.
NO EXHIBITS.
NO RECORD.

dcm

NO. A.C. 11530

ROBERT E. HOUSTON ET AL: APPELLATE COURT

V. : STATE OF CONN.

GEORGE KRAWSHUK ET AL : NOVEMBER 12, 1992

O R D E R

THE MOTION OF THE NAMED DEFENDANT-APPELLANT, FILED SEPTEMBER 29, 1992, FOR RECONSIDERATION, HAVING BEEN PRESENTED TO THE COURT, IT IS HEREBY

O R D E R E D DENIED. THE REQUEST FOR HEARING IS ALSO DENIED.

BY THE COURT,

Alan M. Gannuscio
ASSISTANT CLERK-APPELLATE

NOTICE SENT: 11/12/92
WOLLENBERG, SCULLY & NICKSA
LEPINE & SERRANO
HON. SAMUEL FREED
HARTFORD J.D., (CV91-0391250S)

246/2248

APPELLATE COURT

STATE OF CONNECTICUT

AC 10875

ROBERT E. HOUSTON ET AL.

V.

GEORGE KRAWSHUK ET AL. : March 11, 1992

ORDER

THE MOTION OF THE PLAINTIFFS, FILED DECEMBER 16, 1992, TO DISMISS THE APPEAL OF THE NAMED DEFENDANT, HAVING BEEN PRESENTED TO THE COURT, IT IS HEREBY

O R D E R E D GRANTED. THE REQUEST FOR HEARING IS DENIED.

BY THE COURT,

CYNTHIA M. GWOREK
ASSISTANT CLERK-APPELLATE

Notice sent: March 11, 1992
Wollenberg, Scully & Nicksa
Lepine & Serrano
Clerk, HHD, 391205
TOPAC

Trans. filed
Exhibits not filed
Record not done

NO. CV 91 0391250S	:	SUPERIOR COURT
ROBERT HOUSTON	:	J. D. OF HTFD/NB
VS.	:	AT HARTFORD
GEORGE KRAWSHUK	:	October 24, 1991

ORDER REGARDING MOTION TO OPEN JUDGMENT

UPON DEFAULT

Judgment is reopened for sale purpose of allowing the plaintiff to withdraw against defendant George Krawshuk. Sale date of November 23, 1991 at noon remains in effect.

JD NO Nov. 18, 1991

BY THE COURT

(Freed, J.)
L. A. Cohen

{C:>WP51>CV>KRAWSUPR.CRT-Z}